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February 2, 2006

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Date _____

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constitutes a knowledge of the network system's availability". However, a user's being "alerted" to or "knowing" "which component failed" is clearly not the same as a host system "updating an availability of the network system" using data indicative of the configuration of the plurality of network components, as recited in claim 1. Mere identification of a particular failed component of a plurality of network components does not imply that the availability of the network system is thereby somehow updated. In fact, depending on the specific configuration of the network system, a failure of the same component may lead to completely different changes to the availability of the network system as a whole, so merely informing a user of the identity of a failed component cannot be the same as updating the availability of the network system.

In the Advisory Action mailed on February 1, 2006, the Examiner provides a somewhat different ground for rejecting claim 1, asserting that "by constructing a causal network based on the latest information gathered from any alarm (the update), probabilities of the components in the network failing are calculated, which constitutes "an availability of a network system"". The Examiner's latest interpretation of Chirashnya is also incorrect. Chirashnya's causal networks are used to update malfunction rates for individual modules, which are then compared to "expected, baseline" values for the modules (see, e.g., paragraphs 0052 and 0059). If the failure rate assessment for a given module is significantly higher than its baseline value, further action (such as module replacement or further diagnosis) is recommended. Contrary to the Examiner's suggestion, computing an updated malfunction rate for an individual module or modules does not constitute "updating an availability of the network system". Nowhere does Chirashnya state that an availability for the network system is updated.

The Examiner's assertion in the Advisory Action that "the collection of these parameters constitute network availability" is also incorrect. Updating malfunction rates of individual modules and/or identifying configuration changes does not mean that the availability of the network system is thereby somehow updated. Chirashnya does not teach updating or computing the availability of the network system anywhere. Nor does Chirashnya teach using configuration data obtained from a system discovery process to update the network system availability.

Further with respect to claim 1, the Examiner asserts that Chirashnya teaches "storing data indicative of the availability of the network" in paragraph 0019. However, while paragraph 0019 teaches "gathering event reports", "receiving a report of a change in configuration of the system", "constructing a causal network", "maintaining a database in which the configuration is recorded" and "updating the database responsive to the report of the change in the configuration", it does not teach storing "data

indicative of the availability of the network system". Neither recording changes to a network configuration in a database, nor constructing a "causal network", is the same as storing data indicating the availability of the network system.

For at least the reasons provided above, the rejection of claim 1 is improper. Independent claims 7, 23, 34 and 35 each also recite computing (or calculating) an availability of a network system using configuration data obtained via system discovery, and therefore the rejection of these claims is unsupported by the cited art for similar reasons as claim 1.

Claim 2 recites, in part, using "the updated availability to calculate a risk of the network system becoming unavailable during one or more exposure periods following the failure and prior to a repair or replacement of the failed component, and storing data indicative of the risk". The Examiner is mistaken in asserting that paragraphs 0024 and 0035 of Chirashnya teach this limitation. Neither of the cited paragraphs teaches the limitation in question. In an apparent reference to claim 2, on page 10 of the Final Action the Examiner further asserts that "the calculation of a probability of the system's failure in Chirashnya constitutes a risk of the network system becoming unavailable during the exposure period", without citing a specific portion of Chirashnya in support. Neither paragraph 0024 nor 0035, nor any other portion of Chirashnya, however, teaches or suggests "calculation of a probability of the system's failure". Even if Chirashnya did teach such a calculation, however, the Examiner would be incorrect in the assertion that such a calculation is the same as "using the updated availability to calculate a risk of the network system becoming unavailable during one or more exposure periods following the failure and prior to a repair or replacement of the failed component", as recited in claim 2. Furthermore, Chirashnya also does not teach storing an indication of the calculated risk corresponding to the one or more exposure periods. Accordingly, claim 2 is clearly not anticipated by Chirashnya. Claims 8 and 24 also recite limitations using language similar to that of claim 2, and are therefore also not anticipated by Chirashnya for similar reasons.

Claim 5 recites a host computer system configured, in part, to "determine an acceptable exposure period, wherein the risk of the network system becoming unavailable during the acceptable exposure period is lower than the threshold value, and provide an indication of the acceptable exposure period". The Examiner is incorrect in asserting that paragraphs 0020, 0022, 0027, 0054 and 0063 of Chirashnya teach the combination of limitations of claim 5. None of the cited portions, or any other portion of Chirashnya, teach determining an acceptable exposure period with a lower risk of the network system becoming unavailable than a threshold risk value, and providing an indication of the acceptable exposure

periods. The “updated probabilities” of paragraph 0027 refer to probabilities of malfunctions of individual components, not “risks of the network system becoming unavailable” during specific “exposure periods”. Furthermore, “providing an explanation of the diagnosis” as taught in paragraph 0027 is different from “providing an indication of an acceptable exposure period”. The “two threshold levels” of paragraph 0063 also have nothing to do with determining an acceptable exposure period or providing an indication of such an acceptable exposure period, as recited in claim 5. Claim 5 is therefore clearly not anticipated by Chirashnya.

With respect to claim 11, the Examiner is mistaken in asserting that paragraph 0054 of Chirashnya teaches the limitation of “wherein a first exposure period of the one or more exposure periods is an estimated time to replace the one of the components that failed”. Chirashnya does not mention “estimated times” to replace any components anywhere, much less setting an exposure period in a table to the estimated time to replace a failed component. Accordingly, claim 11 is clearly not anticipated by Chirashnya. Claim 31 is also not anticipated by Chirashnya for similar reasons.

With respect to claims 16-19, 32, 37 and 38 under 35 U.S.C. § 103(a), the Examiner asserts that the features of claims 16-19 and 32 “constitute a design choice rather than a patentable distinction.” The Examiner has not stated proper grounds for rejection. All inventions constitute design choices made by the inventors. The statute clearly places a burden of proof on the Patent Office that requires the Examiner to produce a factual basis for his rejection of an application under sections 102 and 103. *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). The Examiner’s statement that these claim features are a matter of design choice is a conclusory statement with no factual basis. **The Examiner has not provided any evidence of record establishing the obviousness of the recited claim limitations in combination with the other limitations of Applicant’s claimed invention.** The Examiner has merely stated his own opinion, which by definition does not provide a factual basis for the rejection. As the Court of Appeals for the Federal Circuit recently explained in *In re Sang Su Lee*, Docket No. 00-1158 (Fed. Cir. January 18, 2002), “conclusory statements such as those provided by the Examiner that a claim limitation is only a design choice do not fulfill the Examiner’s obligation.” The Examiner’s rejection of claims 37 and 38 is also completely lacking any evidentiary support. Thus, the Examiner has failed to state a *prima facie* rejection of claims 16-19, 32, 37 and 38.

With respect to claims 20, 21 and 39, the Examiner has not met the burden required to qualify the use of Rogers and Noy as prior art, as pointed out in Applicants’ response of December 27, 2005 to the Final Action. The rejection of claims 20, 21 and 31 is therefore also improper.

In addition, the Examiner is mistaken in asserting that Noy teaches the limitations recited in Claim 39. Noy teaches "sending from a device component within a model of a computer network" to other device components in the model (para 0008), but this is different from a host sending a request for identification data to a network component, as recited in claim 39. The device components of Noy are models, not actual components. Also, in providing a motivation to combine Noy and Chirashnya, the Examiner asserts that "identification of the components would enable more efficient monitoring of the components", which does not make sense. Since components have to be identified in order to be monitored, the question of increased efficiency being enabled by identification does not arise. The rejection of claim 39 is therefore improper even if Noy were properly qualified as prior art.

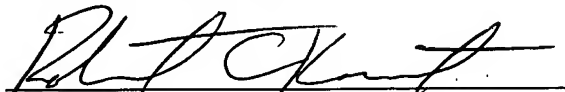
The Examiner has also failed to provide documentary evidence for the Official Notice taken in the rejection of claim 40 (see MPEP 2144.03). Thus, the rejection of claim 40 is also erroneous.

The Examiner's rejection of many of the other dependent claims is additionally erroneous, as discussed in detail in Applicants' previous response on pp. 12-15.

In light of the foregoing remarks, Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 501505/5681-10100/RCK. Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Notice of Appeal

Respectfully submitted,



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Date: February 2, 2006